IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 4601 of 2005

Babaso Daji Patil ..Petitioner

vs.

1. The State of Maharashtra
and another ..Respondents

Shri Amit Sale for petitioner.
Smt.Cardoz, A.G.P. for respondents.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
19th August,2005

P.C.

. We have heard the learned Counsel for the parties. Rule. Returnable forthwith. Respondents waive service. By consent, petition is taken up for hearing.

2. The short question involved in this petition is can a seat for election of Sarpanch in the village panchayat be reserved for women for consecutive term of 5 years. The office of the Sarpanch in village panchayat of Kudnur Taluka Jath, District Sangli was reserved for woman (general) for a term of 5 years commencing from 2000. Again the said office of sarpanch is being reserved for backward class of citizen (woman) for the second consecutive

term of 5 years commencing from 2005.

3. The learned counsel appearing for the petitioner contended that such a reservation of the office of sarpanch in the village for second consecutive term of 5 years for women is not permissible in view of express provisions of sub-rule (4) of Rule 2A of the Village Panchayat (Sarpanch and Upsarpanch) Election Rules, 1964. He submitted that the issue is concluded by an unreported judgment of this Court in Appasaheb Gurbasu Namad Vs. Tahsildar, Jat, Tal.Jath, Dist. Sangli and others (Writ Petition No.3314 of 2000 decided on 1st August, 2000).

4. We find merit in the submission of the learned Counsel. Sub-rule (4) of Rule 2A which is material for our purpose reads as under:

> "(4) the Collector shall allot the offices of Sarpanchas in the district to be reserved for women (including the women belonging to the Scheduled Caste, the Scheduled Tribes and the Category of Backward Class of citizens) by drawing lots;
>
> Provided that the lots in respect of the

women belonging to the Scheduled castes, the Scheduled Tribes and the category of Backward Class of citizens shall be drawn only among the offices of Sarpanchas reserved for such Castes, tribes or as the case may be for the category of Backward Class of citizens.

Provided further that, while rotating such officers in the subsequent elections, the Panchayats where such offices were already reserved in earlier election (holding the women belonging to the Schedule Caste, the Scheduled Tribes and the category of Backward Class of citizens) shall be excluded until in all such panchayats reservations of offices is given by rotation."

5. In the case of Appasaheb Gurbasu Namad (supra), the Division Bench considered the said rule and held that the office of Sarpanch was reserved for backward class category of women, then in that event no separate reservation for women from any other category is permissible until in all the panchayats of the District the reservation in the office of Sarpanch is given. The Division Bench

observed:

> "The aforesaid sub-rule unequivocally lays down that the Collector shall allot the offices of the Sarpranchas in the district to be reserved for women (including the women belonging to the Schedule Caste, Schedule Tribes and the category of backward class of citizens) by drawing lots. The first proviso to sub-rule (4) of rule 2A provides that the lots in respect of women belonging to Schedule Castes, Schedule Tribes and the category of Backward Class of citizens shall be drawn only among the offices of Sarpanchas reserved for such castes, tribes or as the case may be for the backward class of citizens, whereas, the second proviso to the said sub-rule provides that while rotating such offices in the subsequent elections, the Panchayat where such, offices were already reserved in earlier election for women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of backward Class of citizens) shall be executed until in all such panchayats reservation of offices is given, by

rotation. In other words, if the scheme of the Act and the rules framed thereunder are perused, it would be clear that once the office of Sarpanch is reserved for one term of five years for women then while rotating such offices in subsequent elections, the Panchayats where such offices were already reserved in earlier electionfor women are required to be excluded until in all such panchayats reservations are made or provided or given for women by rotation.

Once the office of Sarpanch was reserved for women (General), then no separate reservation for backward class category of women is required to be made. Similarly, if the office of the Sarpanch was reserved for backward class category of women, then in that event no separate reservation for women from any other category is permissible until in all the Panchayats of the District the reservation in the office of Sarpanch is given."

In the light of the decision of the Division Bench, the reservation provided by the respondents to the post of Sarpanch for the backward class citizen

(woman) for period commencing from 2005 is clearly contrary to the rule framed under the Act and hence the same is quashed and set aside and rule is made absolute in terms of prayer clause (b). No order as to costs.